THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2007-0111, Lakes Region Mobile Home Park Cooperative v. Steve Farrell & a., the court on December 5, 2007, issued the following order:

The defendants, tenants in the Lakes Region Mobile Home Park Cooperative, appeal an eviction order issued by the Laconia District Court. We affirm.

On appeal, we will not disturb the factual findings of the trial court unless they lack evidentiary support. We review the trial court's application of the law to the facts de novo. White Cliffs at Dover v. Bulman, 151 N.H. 251, 255 (2004). The interpretation of a statute is a question of law, and we are the final arbiters of the intent of the legislature as expressed in the words of a statute considered as a whole. State v. Huffman, 154 N.H. 678, 680 (2007).

Citing RSA 540:13, VI, the defendants first argue that the trial court erred by not making specific rulings addressing their defenses. RSA 540:13, VI provides that in deciding any contested hearing, the court shall issue a written decision setting forth the basis for its decision. We note that the trial court's order does set forth the basis for the court's decision – it states that the defendants were found to be in material breach of their occupancy agreement by reason of "loose and aggressive dog and refusal to not keep [sic] the dog after notice." Furthermore, to the extent that the defendants argue on appeal that the trial court's order was required to specifically rule upon each of their defenses, they did not file a motion to reconsider pointing out this alleged error to the trial court. Nor did they file any requests for findings of fact and rulings of law with the trial court. Thus, we conclude that they have not preserved this issue for appellate review. See LaMontagne Builders v. Bowman Brook Purchase Group, 150 N.H. 270, 274 (2003).

Similarly, the defendants' argument that the trial court erred by proceeding on offers of proof without providing for cross-examination is not preserved for our review, as the defendants did not object to the procedure followed by the trial court. See Topjian Plumbing & Heating, Inc. v. Bruce Topjian, Inc., 129 N.H. 481, 486 (1987).

Next, the defendants contend that the notice to quit violated RSA 205-A:5, which provides that the manufactured housing park owner shall specify in the notice to quit the reason for the termination of the tenancy. See also RSA 540:3, III (eviction notice shall state with specificity the reason for the eviction).

The October 16, 2006 notice to quit and vacate cites the defendants' violations of the Occupancy Agreement regarding "your dog consistently getting loose and its aggressive behavior." It further notes that the defendants were given notice on June 2, 2006, with regard to termination of tenancy should they continue to be in default of the agreement. See RSA 205-A:4, V (permissible reasons for eviction include failure to comply with reasonable written rules and regulations provided tenant is first given written notice of the failure to comply and a reasonable opportunity to comply). We conclude that the notice to quit and vacate sufficiently specifies the reason for the eviction.

The defendants argue that the plaintiff failed to make reasonable accommodations as required by the state Law Against Discrimination and the federal Fair Housing Amendments Act. We assume that the trial court made all findings necessary to support its decision. See Penrich, Inc. v. Sullivan, 140 N.H. 583, 588 (1995). We agree with the plaintiff that the evidence does not compel a finding that Mr. Farrell or his grandson is handicapped or disabled as those terms are defined in the state and federal acts. See 42 U.S.C.A. § 3602(h); RSA 354-A:2, IV. Furthermore, the evidence supports a finding that the plaintiff made reasonable accommodations by waiving the park rule that prohibited dogs weighing more than twenty-five pounds, subject to reasonable conditions. Accordingly, we find no error.

Next, the defendants contend that the trial court erred by not finding that the eviction action was retaliatory. Again, we assume that the trial court made all findings necessary to support its decision. See Penrich, Inc., 140 N.H. at 588. Here, as the plaintiff points out in its brief, its offer of proof demonstrated a legitimate basis for commencing the eviction proceeding; thus, the trial court could have found that the eviction action was not retaliatory. See White Cliffs at Dover, 151 N.H. at 255. Furthermore, the defendants' retaliation claim is based upon the defendants' success in defeating a prior eviction action and upon certain unspecified personal comments that were exchanged between the parties. The hearing upon the prior eviction action occurred in November 2006; the evidence does not indicate when the alleged personal comments were made. The notice to quit and vacate that led to the instant eviction proceeding is dated October 16, 2006; the trial court could have found that the defendants did not prove that any of the events upon which they rely for their retaliation claim predated the issuance of the notice to quit and vacate. The notice to quit and vacate specifically stated that failure to quit and vacate the premises on or before December 15, 2006, "will result in commencement of eviction proceedings" against the defendants. Thus, the evidence amply supports the trial court's presumed finding that the eviction action was not retaliatory.

Finally, the defendants rely upon RSA 205-A:2, VIII(d), which prohibits enforcement of any park rule that requires a tenant to dispose of any pet

"which the tenant had prior permission from the park owner or former park owner to possess or use; provided, however, that such a rule may be made and enforced if it is necessary to protect the health and safety of other tenants in the park." We need not address whether the evidence supports a finding that enforcement was necessary to protect the health and safety of other tenants in the park because we conclude that the statute does not apply here. The park rule prohibiting dogs weighing over twenty-five pounds was in effect when the defendants obtained their dog. The park owner and the defendants thereafter entered into an agreement that gave conditional permission to the defendants to keep the dog, despite the fact that it weighed more than twenty-five pounds. Absent proof of the defendants' violation of those conditions, RSA 205-A:2, VIII(d) might well prevent the plaintiff from attempting to enforce the twenty-five pound weight limit rule with respect to the defendants' dog. Here, however, the evidence supports the finding that the defendants violated the conditions of the agreement. Accordingly, we conclude that nothing in RSA 205-A:2, VIII(d) prohibited the plaintiff from bringing this eviction action.

Affirmed.

DALIANIS, GALWAY and HICKS, JJ., concurred.

Eileen Fox,
Clerk